

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-TC-060
)	
CableOne)	CUID No. CA0901 (Union City)
)	
Complaint Regarding Cable Programming)	
Services Tier Rates and Refund Plan)	

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider complaints filed against the rates charged by the above-referenced operator ("Operator")² for its cable programming services tier ("CPST") in the community referenced above. The Cable Services Bureau has already issued an Order, DA 95-2168 ("Prior Order"),³ which resolved complaints filed against Operator's CPST rates in effect through May 14, 1994. In its Prior Order, the Cable Services Bureau stated that its findings "do not in any way prejudice the reasonableness of the price for CPS service after May 14, 1994 under our new rate regulations."⁴ Operator filed a refund plan in response to the Prior Order. In this Order, we address the reasonableness of Operator's CPST rates for the above-referenced community beginning May 15, 1994 as well as Operator's refund plan.

2. Under the provisions of the Communications Act⁵ that were in effect at the time the referenced complaints were filed, the Federal Communications Commission ("Commission") is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁶ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a complete and timely complaint triggers an

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² The term "Operator" includes Operator's successors and predecessors in interest.

³ *In the Matter of Post-Newsweek Cable, Inc.*, DA 95-2168, 10 FCC Rcd 11559 (CSB 1995).

⁴ *Id.* at n. 1.

⁵ Communications Act, Section 623(c), *as amended*, 47 U.S.C. § 543(c) (1996).

⁶ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

obligation upon the cable operator to file a justification of its CPST rates.⁷ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁸ If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Cable operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹¹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. Upon review of Operator's FCC Form 1200, we accept Operator's calculated maximum permitted rate ("MPR") of \$11.12. Because Operator's actual CPST rate of \$11.75, effective May 15, 1994 through June 30, 1994, exceeds its calculated MPR of \$11.12, we find Operator's actual CPST rate of \$11.75, effective May 15, 1994 through June 30, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210, covering the period April 1, 1994 through June 30, 1994, we accept Operator's calculated MPR of \$11.42. Because Operator's actual CPST rate of \$11.75, effective July 1, 1994 through September 30, 1994, exceeds its calculated MPR of \$11.42, we find Operator's actual CPST rate of \$11.75, effective July 1, 1994 through September 30, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210, covering the period July 1, 1994 through September 30, 1994, we accept Operator's calculated MPR of \$11.65. Because Operator's actual CPST rate of \$11.75, effective October 1, 1994 through December 31, 1994, exceeds its calculated MPR of \$11.65, we find Operator's actual CPST rate of \$11.75, effective October 1, 1994 through December 31, 1994, to be unreasonable. Upon review of Operator's FCC Form 1210, covering the period October 1, 1994 through December 31, 1994, we find Operator's actual CPST rate of \$11.75, effective January 1, 1995, to be reasonable.

5. Our review of Operator's refund plan for Order, DA 95-2168, reveals that Operator's total overcharges for the period under review are *de minimis* and it would not be in the public interest to order refunds. We dismiss Operator's refund plan for Order, DA 95-2168, as moot.

6. Accordingly, IT IS ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.75, charged by Operator in the community referenced above, effective May 15, 1994 through December 31, 1994, IS UNREASONABLE.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$11.75, charged by Operator in the community

⁷ See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

⁸ *Id.*

⁹ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

¹⁰ See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

referenced above, effective January 1, 1995, IS REASONABLE.

8. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.12 per month (plus franchise fees), plus interest to the date of the refund, for the period May 15, 1994, through June 30, 1994.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.42 per month (plus franchise fees), plus interest to the date of the refund, for the period July 1, 1994, through September 30, 1994.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$11.65 per month (plus franchise fees), plus interest to the date of the refund, for the period October 1, 1994 through December 31, 1994.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

12. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator's refund plan for Order, DA 95-2168, IS DISMISSED.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaints referenced herein against the CPST rates charged by Operator in the community referenced above ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau